

IN THE CIRCUIT COURT OF THE UNITED STATES, IN AND FOR THE NINTH JUDICIAL CIRCUIT, DISTRICT OF CALIFORNIA.

LEO GOLDMARK, ET AL

COMPLAINANTS

VS

WILLIAM KRELING, ET AL

RESPONDENTS.

PETITION FOR A REHEARING OF THE MOTION HEARD IN THE ABOVE ENTITLED CASE ON MONDAY OCTOBER 19.

YOUR PETITIONERS, THE COMPLAINANTS IN THE ABOVE ENTITLED CASE, BY THEIR SOLICITOR, JOSEPH D. REDDING, RESPECTFULLY AND MOST URGENTLY REQUEST A HEARING OF THE MOTION ON THE PETITION TO MODIFY THE ORDER OF THIS HONORABLE COURT MADE OCTOBER 16, DIS- SOLVING THE TEMPORARY INJUNCTION HERETOFORE GRANTED COMPLAINANTS, ENJOINING THE RESPONDENTS FROM PRODUCING THE OPERETTA OF NANOON. THE GROUNDS UPON WHICH YOUR PETITIONERS RELY FOR THE REHEARING ARE AS FOLLOWS:

1. THIS IS A BILL IN EQUITY IN WHICH THE COMPLAINANTS SET FORTH THAT THEY ARE THE OWNERS OF AN UNPUBLISHED DRAMATIC COMPOSITION, AND AS SUCH, UNDER THE COMMON LAW, ENTITLED TO THE SOLE PRIVILEGE OF REPRESENTING THAT COMPOSITION TO THE PUBLIC.

2. THE ONLY RESCUE THAT THE OWNER OF AN UNPUBLISHED PIECE OF MANUSCRIPT HAS AGAINST AN UNLAWFUL APPROPRIATION OR PIRATICAL USE OF THE SAME IS BY INJUNCTION, AND THE COURTS OF THE UNITED STATES AND OF ENGLAND HAVE UNIFORMLY HELD THAT IT IS THE DUTY OF COURTS OF EQUITY TO GRANT AN INJUNCTION WHERE A PROPER BILL IS FILED.

3. THAT THERE IS NO RECOURSE TO THE COMPLAINANTS BY WAY OF DAMAGES WHICH WILL INDEMNIFY THEM IN CASE RESPONDENTS ARE

ALLOWED TO PROCEED WITH ITS PRODUCTION, BECAUSE IT IS STOPPING AND PREVENTING THE PIRACY WHICH IS THE REMEDY SOUGHT BY THE BILL, AND IF AN INJUNCTION IS NOT ALLOWED TO COMPLAINANTS, THE REMEDY SOUGHT BY THE BILL IS NOT ACCOMPLISHED.

4. THE COMPLAINANTS FILED THEIR BILL ON THE 18TH DAY OF SEPTEMBER, AND THEREUPON THIS COURT ISSUED A RESTRAINING ORDER AGAINST THE RESPONDENTS WITH AN ORDER TO SHOW CAUSE WHY THIS RESTRAINING ORDER SHOULD NOT BE MADE AN INJUNCTION. THE RESPONDENTS FAILED TO SHOW CAUSE, AND THIS COURT, ON THE FIRST DAY OF OCTOBER TURNED THE RESTRAINING ORDER INTO AN INJUNCTION.

5. THE COMPLAINANTS FAILED TO PRESENT A GOOD AND SUFFICIENT BOND TO THE COURT UP TO OCTOBER 16, BY WHICH THE RESPONDENTS SHOULD BE INDEMNIFIED IN CASE IT WAS FINALLY DECIDED THAT THE INJUNCTION SHOULD NOT HAVE BEEN GRANTED TO THE COMPLAINANTS. AND THIS COURT STATED ON THAT DAY THAT THE COMPLAINANTS HAD SHOWN BAD FAITH IN THE MATTER OF PROVIDING SAID BONDS, BUT THE COMPLAINANTS DID ON THAT DAY, AND BEFORE THE COURT MADE ITS ORDER DIS-
SOLVING THE INJUNCTION, OFFER GOLD COIN IN LIEU OF THE BONDS, OR P. A. FIMREGAN, A MILLIONAIRE, AS ONE OF THE BONDSMEN.

6. AT THE TIME THE COMPLAINANTS MADE THIS OFFER, EVEN IF THEY HAD SHOWN EVIDENCE OF BAD FAITH IN THE MATTER OF THE BONDS, WHICH THESE COMPLAINANTS DO NOT ADMIT, THE RESPONDENTS HAD NOT MADE ANY APPEARANCE IN THIS CASE NOR HAD THEY IN ANY WAY REFUTED THE ALLEGATIONS OF THE BILL.

7. THE RIGHT TO AN INJUNCTION IN THIS CASE TO THE COMPLAINANTS IS BASED ON THE PRIMA FACIE CASE MADE OUT BY THE BILLS AND THE SUFFICIENCY OF THE ALLEGATIONS. THE RIGHT TO THE INJUNCTION DOES NOT DEPEND ON THE SUFFICIENCY OF THE BONDS, BUT THE RIGHT TO HAVE THE INJUNCTION OPERATIVE DEPENDS ON THE

SUFFICIENCY OF THE BOND, AND THE COMPLAINANTS OFFERED A SUFFICIENT BOND, OR IN LIEU THEREOF, GOLD COIN BEFORE THE RESPONDENTS ⁱⁿ

~~HAYMAN HAD REFUTED THE ALLEGATIONS OF THE BILL.~~ *approved in the case*

8. IT APPEARS BY THE AFFIDAVIT OF LEO GOLDMARK, ONE OF THE COMPLAINANTS, THAT HE IS A STRANGER IN SAN FRANCISCO; THAT HE HAD DIFFICULTY IN GETTING CREDIT HERE TO THE AMOUNT OF TEN THOUSAND DOLLARS; THAT HE HAS NEVER BEEN CALLED UPON BEFORE IN ANY OF THESE TWENTY-SIX SUITS, TO FILE A BOND IN A LARGER SUM THAN THREE THOUSAND DOLLARS.

9. IT FURTHER APPEARS BY THESE AFFIDAVITS THAT HE BELIEVED THAT THE BONDSMEN HE PRESENTED WERE WELL QUALIFIED AND WAS SO INFORMED BY A NUMBER OF INFLUENTIAL AND REPUTABLE CITIZENS AND WAS NOT PREPARED TO HAVE THEM REFUSED BY THIS COURT.

10. THE REASON WHY A. L. HAYMAN WAS FOR THE SECOND TIME SUBMITTED AS A BONDSMAN AFTER HAVING BEEN REJECTED THE FIRST TIME WAS AT MR. HAYMAN'S SPECIAL REQUEST AND UPON HIS DECLARATION THAT HE WAS FIVE TIMES WORTH THE AMOUNT OF THE REQUIRED BONDS, AND HE DESIRED TO GO ON THE BOND IN ORDER TO MAINTAIN HIS CREDIT IN THE COMMUNITY, AND AT HIS SPECIAL INSTANCE COUNSEL FOR THE COMPLAINANTS SUBMITTED HIM FOR THE SECOND TIME.

11. THAT LEO GOLDMARK WAS TOTALLY UNPREPARED FOR MR. HAYMAN BEING REFUSED ON THE BOND, BUT FORTUNATELY HAD RECEIVED WORD FROM NEW YORK THAT MORNING BY WHICH HE WAS ENABLED TO GET TEN THOUSAND DOLLARS FROM A SAN FRANCISCO BANK AND THUS MAKE THE OFFER WHICH HE DID ON THE MORNING OF THE 16TH, BEFORE THE ORDER OF THIS COURT DISSOLVING THE INJUNCTION HAD BEEN RENDERED.

12. YOUR PETITIONERS RESPECTFULLY SUBMITS THAT IF THE COURT HAD RECEIVED THE IMPRESSION AND WAS CONVINCED THAT THE

COMPLAINANTS HAD EXHIBITED BAD FAITH IN THE MATTER OF THE BOND,
STILL THE COURT HAD NO RIGHT TO REFUSE THE TEN THOUSAND DOLLARS
OFFERED BY THE COMPLAINANTS AND LET THE INJUNCTION ISSUE.

13. THE COURT ERRED IN REFERRING TO AND FOLLOWING THE DE-
CISIONS OF JUDGE WALLACE IN CASE OF THE MIKADO RECENTLY DECIDED
IN THE COURTS OF NEW YORK, AS A BASIS FOR ALLOWING THE RESPONDENTS
TO GO ON AND PROCEED AND PLAY UPON RESPONDENTS GIVING A PROPER
BOND TO THE COMPLAINANTS, FOR THESE REASONS:

A. IN THE CASE OF THE MIKADO THE RESPONDENTS HAD APPEARED
AND FILED THEIR ANSWER, PETITIONERS APPEARED IN COURT ON THE 10TH
OF OCTOBER, A FULL AND EXHAUSTIVE ARGUMENT UPON THE MERITS OF THE
WHOLE CASE HAD BEEN MADE BEFORE THE COURT.

B. THE FACTS AND CIRCUMSTANCES IN THE CASE OF THE MIKADO
ARE ENTIRELY DIFFERENT FROM THOSE IN THE CASE AT BAR IN THIS;
THAT THE CASE AT BAR PROCEEDS UPON THE THEORY OF COMMON LAW
RIGHTS APPERTAINING TO UNPUBLISHED MANUSCRIPTS ~~XXXXXXXXXXXX~~
WHILE IN THE MIKADO CASE IT WAS ADMITTED THAT THE COMPLAINANTS HAD
PUBLISHED AND DEDICATED TO THE WORLD THEIR OPERA WITH THE EXCEP-
TION OF THE ORCHESTRATION, AND THEY SOUGHT THEIR INJUNCTION UPON
AN ALLEGED STATUTORY LAW APPERTAINING TO COPY RIGHT.

C. THE BOND IN THAT CASE WAS GIVEN AFTER ARGUMENTS AND
UPON MUTUAL CONSENT AND AGREEMENT BETWEEN COMPLAINANTS AND THE
RESPONDENT WHICH WAS SANCTIONED BY THE COURT.

14. AS THE RECORD STOOD ON THE MORNING OF THE 16TH, THE
ONLY GROUND FOR THE DISSOLUTION OF THE INJUNCTION WAS THE BAD
FAITH OF THE COMPLAINANTS IN THE MATTER OF THE BOND, AND THIS BAD
FAITH WAS REFUTED BY THE OFFER MADE BY COUNSEL FOR COMPLAINANTS
TO THE DEPOSIT WITH THE CLERK OF THE COURT EITHER A CERTIFIED
CHECK OR TEN THOUSAND DOLLARS IN GOLD COIN OR A NEW SURETY REPUTED

TO BE WORTH A MILLION DOLLARS.

15. THE COURT ERRED IN DISSOLVING THE INJUNCTION AT THAT TIME, BECAUSE AN EXAMINATION OF THIS BILL, WHICH IS A NOVEL ONE IN THESE COURTS AND IS A NOVEL LITIGATION OF THIS COAST, SHOWS THAT IN SO DOING THE REMEDY SOUGHT BY THE BILL IS FOREVER LOST TO THE COMPLAINANTS, AND THEREFORE THE COURT SHOULD HAVE BEEN FULLY INFORMED AS TO THE NATURE OF THE REMEDY SOUGHT, AND THE RIGHT OF THE COMPLAINANTS TO THAT REMEDY, AND BASE HIS ORDER OF DISSOLUTION UPON A FULL EXAMINATION AND INFORMATION.

16. WHEN YOUR PETITIONERS APPLIED IN COURT ON THE 19TH OF OCTOBER THE PETITION TO MODIFY THE ORDER OF THE 15TH WAS MET BY COUNTER AFFIDAVITS ON THE PART OF THE RESPONDENTS. YOUR PETITIONERS HEREIN SUBMIT THAT SAID COUNTER AFFIDAVITS IN NOWISE OR AT ALL REFUTED THE ALLEGATIONS OF THE BILL OR BREAK DOWN THE PRIMA FACIE CASE OF THE COMPLAINANTS.

17. IF SAID AFFIDAVIT OF RESPONDENTS THEN FILED WERE IN ANYWISE SUFFICIENT TO RAISE A DOUBT IN THE MIND OF THIS COURT, SAID AFFIDAVITS WERE AND ARE NOT APPLICABLE TO THE RIGHT OF THE COMPLAINANTS TO AN INJUNCTION ON THE 15TH OF OCTOBER.

18. THE COURT FURTHER ERRED IN PERMITTING THE DEFENDANT TO GO ON AND PLAY THE OPERETTA OF THE COMPLAINANTS UPON THE RESPONDENTS GIVING A BOND TO THE COMPLAINANTS IN THE SUM OF TEN THOUSAND DOLLARS, AS THE RULE LAID DOWN BY THE COURT WOULD PRACTICALLY AMOUNT TO AN ABOLITION OF THE WRIT OF INJUNCTION IN ANY CASE WHERE THE PLAINTIFF SEEKS THAT REMEDY AND THE DEFENDANT IS WILLING TO FILE SUCH A BOND. THE SAME RULE COULD BE FOLLOWED IN OTHER INSTANCES WHERE A COMPLAINANT SHOWS HIMSELF ENTITLED TO AN INJUNCTION; SUCH RULE WOULD PRACTICALLY AMOUNT TO THE ABOLITION

ABLE INJURY SUFFERED BY THEM FROM A PIRATICAL OR ILLICIT PRODUCTION.

23. UNDER THE RULES LAID DOWN BY THE AMERICAN AND ENGLISH COURTS IN CASE OF THE UNAUTHORIZED PUBLICATION OF MANUSCRIPT WORKS THE COMPLAINANT IS ONLY ENTITLED TO RECOVER OF THE RESPONDENTS ALL DAMAGES THE AMOUNT OF PROFITS MADE BY THE RESPONDENTS BY VIRTUE OF SUCH UNAUTHORIZED PUBLICATION AND SALE. THE SAME RULE IF FOLLOWED IN THIS CASE OR IN OTHER CASES OF UNLAWFUL REPRESENTATION UPON THE STAGE OF UNPUBLISHED MANUSCRIPT WORK, WOULD UTTERLY FAIL TO COMPENSATE THE COMPLAINANTS FOR THE DAMAGES AND INJURY SUFFERED FOR THE REASON THAT IT IS DOUBTFUL WHETHER THE RESPONDENTS MAKE ANY PROFIT AT ALL; AND SECOND THAT IT IS ENTIRELY WITHIN THEIR CONTROL TO DECLARE WHAT MAY AND MAY NOT BE PROFITS AND WHAT MAY OR MAY NOT BE PROPER AND LEGITIMATE EXPENSES IN PRODUCING SAID WORKS.

23. THE COURT ERRED IN PERMITTING THE RESPONDENTS TO PROCEED WITH THE OPERA UPON THEIR FILING THE PROPER BONDS IN THE SUM OF TEN THOUSAND DOLLARS BECAUSE THE RIGHT FOR AN INJUNCTION HAS ACCRUED TO THE COMPLAINANTS AND ONLY CAN BE DESTROYED UPON ARGUMENTS UPON THE MERITS AND SUBSEQUENT DISMISSAL OF THE BILL, AND UNTIL THE CASE ASSUMES THAT FORM, AND CAN BE SO PRESENTED, THE RIGHT FOR THE INJUNCTION TO THE COMPLAINANTS CANNOT BE LOST, AND THE INJUNCTION MUST BE MADE OPERATIVE IN FAVOR OF THE COMPLAINANTS WHENEVER THE PROPER BOND IS FILED.

WHEREFORE YOUR PETITIONERS RESPECTFULLY PRAY FOR A REHEARING OF THE MOTION MADE ON THE 10TH INSTANT, AND FOR A MODIFICATION OF THE ORDER OF THE 15TH INSTANT, AND FOR ALL SUCH EQUITABLE RELIEF AS THE COURT MAY DEEM JUST AND PROPER.

*And your petitioners
Joseph D. Redney
Solicitor & Counselor for
Complainants,*

At a stated term, to wit: the *July* term A.D. 188*5*
of the Circuit Court of the United States of America, of the
Ninth Judicial Circuit, in and for the District of California,
held at the Court Room, in the City and County of San
Francisco, on *Thursday* the *1st*
day of *October* in the year of our Lord one
thousand eight hundred and *eighty five*

PRESENT:

Ogden Hoffman, U.S. District Judge
The Honorable ~~Lorenzo Sawyer~~, Circuit Judge.

Lee Goldmark et al.

vs.

Joseph Kreling et al

No. 3838.

This cause came on regularly this day
to be heard upon the motion for an injunc-
tion herein, *Joseph S. Redding Esq* appearing for
the complainants and said motion and *H. H. Cope* and
N. H. Lowenthal Esq for the defendants and in op-
position to said motion, and was argued by the
respective counsel and submitted to the Court
for consideration and decision. And the same
having been duly considered, it is ordered that a
temporary injunction enjoining and re-
straining the defendants herein, their agents,
assigns, servants and attorneys and each and
every person acting under the authority of said
defendants, from producing or perform-
ing or enacting the operetta "Mimi" or any
operetta under the said title, issue on the
complainants herein giving a bond in
the sum of ten thousand dollars to be approved
by the Clerk of said Circuit Court, said Com-

No. 3835 ✓

U. S. Circuit Court,

Ninth Circuit, District of California.

Los Alamitos
vs
Franklin B. Boring
et al.

Draft of Order.

[Signature]

Filed Oct 1 1885.

[Signature]
Clerk

Deputy Clerk.

By

I hereby certify that the foregoing is a full, true and correct copy of

entered in the above entitled cause.

ATTEST my hand and the seal of said Circuit Court

this day of

A.D. 1885

Clerk.

Deputy Clerk.

Memorandum to have to and making returns
the 3rd instant to before and file with
book. And that the returning order here-
before made be continued in force upon the
land already given, said defendant to
have leave at any time within five days
notice to seek compensation to apply
to the Court to discontinue such in-
junction.

In the U. S. Circuit Court
District of California

Goldmark et al

vs
Kieling

In pursuance to an order of this Court
in the above entitled case,
L. L. Denney and M. E. Joice
appeared before me to qualify as
sureties on the injunction bond
issued herein. I examined them as
to their property qualifications and also
A. Hayman & I became satisfied and
now am satisfied that the bond
with the additional name ^{of A. Hayman} ~~as~~ will be
sufficient & I have ~~affirmed~~ the
~~same & the same with the three~~
~~names of L. L. Denney, M. E. Joice~~
~~& A. Hayman, as bondsmen, is now~~
~~on file~~

W B Sawyer
Clerk U. S. Circuit Ct
Oct. 12th 1895,

3838

No. 1 in each bunch
But Col

Lee Schwartz
Chae

-4-

of the land -

Help and you'll suffer
by - garden in harvest

Phad Oct 12, 1885

John O. Davis
Chen

United States Circuit Court,
Ninth Judicial district and
district of California.

In Equity.

Leo Guldmark

et al

vs.

Joseph Keeling

et al.

United States of America, }
State of California, City and } Pl.
County of San Francisco }

I, John Keeling, being
duly sworn doth depose and
say, I am one of the defendants
in this action, I was present on
the evening of September 17th at the
interview had between Leo Guldmark,
one of the complainants, and Joseph
Keeling, whose affidavit is hereto
annexed; that in said interview
said Guldmark stated, that in the
play produced that evening he
failed to recognize the Operetta "Nani",
with the exception of some of the
songs and words of the songs.

That the stage business, scenery, dialogue and costuming, also the orchestration, was such that he failed to recognize them, and were not those of the Operetta "Nanon", and were something new and original and not intended nor adapted for "Nanon" at all.

Complainant Goldmark made overtures to defendants to furnish them with the original operetta of "Nanon", upon the payment to him of ten per cent of the gross receipts in said Tivoli Opera House, and threatened that unless his demands were agreed to, the said Goldmark would again enjoin the defendants from producing the Operetta aforesaid, under the name of "Nanon", by reason of the defendants use of said name "Nanon" in the representation thereof at said Tivoli Opera House.

I thereupon asked said Complainant Leo Goldmark, why complainants had given a worthless bond in the Superior Court upon procuring the injunction

in said Court, and why the Complainants had failed and neglected, and refused to file the increased bond, ordered to be filed in the Superior Court, after procuring several extensions of time to file the same; and why the Complainants waited until the evening of the day on which the Operetta was to be represented on the stage at the Twelfth Opera House, before procuring said injunction, and without notifying defendants of Complainants pretended claim to said Operetta, or to the title "Nanon"; Whereupon said Leo Goldmark answered that he was not ready to answer counterclaims, and that defendants would find it far more profitable to agree to the terms proposed by him, said Leo Goldmark aforesaid. From the conversation aforesaid, and from the acts of Complainants throughout this litigation, and from other information I have received, I believe the Complainants never intended to give a good and

sufficient bond to indemnify the defendants, but they have from the beginning adopted a scheme of harassing proceedings to delay and injure the defendants, with the sole object of forcing them to accept complainants propositions of extortion, and knowing that the defendants would rather pay considerable money than disappoint the public, by being enjoined at the last moment from producing the opera upon worthless bonds.

I am informed and believe the complainants are wholly irresponsible and have no visible assets, out of which any judgment recovered by the defendants could be satisfied.

Subscribed and sworn
to before me this 19th day of Oct. 1885.

John Kreling

J. D. Moncton
Commissioner of the
Circuit Court Dist. of Cal

United States
Circuit Court

North District
3838

vs
Edo Goldmark
et al

vs
Joseph Keeling
et al

Apparatus of
John Keeling

Filed Oct. 19, 1885-

L. S. O. Sawyer
Clerk

vs H. Brown et al
Indictor for depts.

Circuit Court, United States
District of California,

Leo Goldmark et al
v.
Joseph Krieling et al.

To W. W. Cape & H. H. Loeenthal
Solicitors for Respondents

Please take notice, that the
Complainants wish on the within
Petition and affidavit and on the
papers in the case, move this
Honorable Court to modify the
order of Court made ^{herein} Oct 16th 1885 -
dissolving the temporary injunction
heretofore granted & also ^{move} for
another ^{affidavit for such other relief as is prayed for on complaint may be entitled} temporary injunction.
The said motions to be made Monday
Oct 19th at 11 am in this Court
as soon thereafter as counsel may
be heard.

Joseph D. Redding
Solicitor & of Counsel for
Complainants, Oct 17, 1885

Let the time for service of this notice
be shortened to fifteen hours

George Sawyer
Circuit Judge

In the Circuit Court of the United States for the
Ninth Circuit and District of California.

LEO GOLDMARK and
HENRY CONRIED,

Complainants,

IN EQUITY.

vs

Joseph
~~WILLIAM~~ KRELING, et al.

Respondents.

Petition on the part of complainants to amend
the Order of the Court duly made and entered on Friday,
October 16, 1885, by the Clerk thereof, in the words and
figures following, to wit:

'It is hereby ordered that the temporary injunction
'heretofore granted be dissolved, upon the respondents'
'filing a bond in the sum of ten thousand dollars on Mon-
'day, October 19th, at two o'clock, p. m.' and petition
for a temporary injunction to issue in favor of the com-
plainants.

The complainants respectfully petition:

- 1st: That the order above set forth may be modified.
- 2nd: That a temporary injunction be granted by this
honorable Court, upon notice restraining and enjoining
respondent, until the further order of this Court, their
servants, agents and attorneys, from producing and acting,
singing or playing the operetta of 'Nanon' or any
operetta under that name.

The grounds of your petitioner for a modification of the order of the Court above referred to are as follows:

1st: That the honorable Court, in making that order, erred in matters of law and equity in the following particulars:

(a) That the order of this Court dissolving the temporary injunction heretofore granted upon the respondents filing a bond, is virtually deciding the complainants' right to an injunction, against complainants, without the case being at all heard upon the merits; that said order so dissolving the temporary injunction is virtually a judgment of this Court that the complainants' bill does not disclose any grounds for an injunction.

(b) That the Court erred, because these complainants having filed their bill in equity praying for an injunction, accompanied said bill by affidavits and exhibits, that said bill, with said affidavits and exhibits, shows a good case for an injunction; that the respondents have not put in any appearance in this cause, nor filed any counter affidavits, nor made any effort of whatsoever nature to defend said action or controvert the allegations in said bill.

The complainants respectfully submit that said order should have been to the effect that the temporary injunction heretofore granted be dissolved with leave to complainants to ^{obtain} ~~move~~ for a new injunction, upon the filing of proper bonds.

The essence of this bill, and the sole object of it,

is, to enjoin the respondents in the commission of certain acts; and if the court, at this preliminary stage of the proceedings, shall make an order dissolving the temporary injunction heretofore granted upon the respondents filing a bond in ten thousand dollars, then, and in that case, the sole and only object of complainants' bill is defeated, and cannot be accomplished.

The further reasons why, at this stage of the proceedings, a temporary injunction should be granted complainants are:

(a) That the bill, the affidavits and exhibits attached thereto, constitute a good cause for an injunction, and the same have in no way, as yet, been met or controverted by respondents.

(b) That attached to this petition is an affidavit of Leo Goldmark, one of the complainants in this cause; that said affidavit sets forth the good faith and earnest effort of said complainant to procure bondsmen on the order of the Honorable Ogden Hoffman, dated October 1, 1885, granting the complainants a temporary injunction, on the filing of a good and sufficient bond in the sum of ten thousand dollars; that said affidavit also sets forth that the complainant is now prepared to furnish good and sufficient bondsmen in any sum that the Court may deem proper, or, in lieu thereof, to deposit United States gold coin, or a certified check, or securities, in the hands of the Clerk, to indemnify the respondents in case this suit should ultimately be determined in their favor, if it

should be finally decided that complainants were not entitled to an injunction.

The respondents have advertised to produce said operetta of 'Nanon' on Monday, October 19th, 1885; that an irreparable injury, as set forth in the original bill, will be done to the complainants in this action if respondents are allowed so to produce that operetta, because the value of this property of 'Nanon' to complainants consists most particularly in the novelty of its production in this city, and complainants intend to produce said operetta on the 26th of this present month.

Wherefore your petitioner prays that the order of said Court, above set forth, of October 16th, be modified to the effect that the temporary injunction heretofore granted be dissolved with leave to complainants to obtain another temporary injunction upon such conditions as to bonds as the Court may direct.

And your petitioners finally pray, that the service of a copy of this petition, accompanied with the notice that the petition will be presented at eleven o'clock, a. m. upon Monday, October 19th, 1885, before this honorable Court, be deemed sufficient notice to respondents of the intention of complainants to move in the above behalf.

And petitioner also prays that the time for calling up this motion be shortened so that the matter can be called up at said time. *and for all other relief that may be just and equitable.*

And your petitioners will ever pray:

Joseph H. Ridding
Solicitor & Counsel for Complainants
and petitioners

In the Circuit Court of the United States, for the
Ninth Circuit and District of California.

LEO GOLDMARK and

HENRY CONRIED,

Complainants,

vs

IN EQUITY.

WILLIAM KRELING, et al.

Respondents.

Affidavit of Leo Goldmark.

Leo Goldmark, being duly sworn,
deposes and says: I am one of the complainants in the
above entitled action. I reside in New York. I have
filed a bill in equity in this court on the 18th day of
September, 1885, setting forth that complainants were and
are the owners of the operetta of 'Nanon', and as such,
entitled to the sole production of it, and praying among
other things that respondents be enjoined from producing
said operetta; that accompanying said bill in equity were
affidavits and exhibits showing the title and right of
possession of complainants to said operetta; that upon
said bill, affidavits and exhibits a restraining order
was granted by this honorable Court, upon a bond being
given and approved by the Clerk, in the sum of ten thou-
sand dollars, with an order to show cause on September
28th why said respondents should not be enjoined during
the pendency of this action; that I filed a bond with

M. E. Joyce and Al. Hayman as sureties, in the sum of ten thousand dollars; that thereupon a restraining order was issued, and served upon the respondents; that five days elapsed and no exception was taken by respondents to the bondsmen; that thereupon I telegraphed and wrote to my co-complainant and to my bankers in New York that the bond on which the restraining order had been granted was sufficient; that on September 28th the respondents appeared in Court, and asked for further time, which was granted, until October 1st; that on said last-named day, to wit: October 1st, respondents and complainants appeared by their counsel in said Circuit Court, and respondents moved for further time to show cause; that the honorable Court then and there denied the respondents further time, and made an order that a temporary injunction issue in this cause, enjoining the respondents, according to the bill in equity, upon the complainants filing a new bond in the sum of ten thousand dollars on or before Saturday, October 3rd, 1885, and that in the meanwhile the restraining order heretofore granted should stand until the new bond was approved; that on Friday, October 2nd, 1885, I, on behalf of the complainants, and as one, presented two bondsmen to the Honorable L. S. B. Sawyer, namely: L. L. Denery and M. E. Joyce; said Sawyer duly examined the same as to their qualifications, and approved the same, whereupon an order for an injunction, signed by the Honorable Ogden Hoffman, was made, and served upon the respondents; that thereafter, on October 5th, notice was served

leave or deposit said securities with Mr Lowenthal; Mr Hayman has never expressed or intimated his unwillingness to deposit said securities with the Clerk of the Court, as directed by said order, and his testimony shows that he was willing to do so; and I verily believe, and have been so informed by Mr Hayman, that he was ready and willing to deposit said securities with the Court or the Clerk thereof.

In conjunction with said Al. Hayman I offered, as another surety upon my bond, Mr Henry Shrier, who testified at the examination by Mr Lowenthal that he was a citizen of this State, a resident of this city, and has been in business as a partner of the wholesale firm of J. Baum & Company since 1869; that he was the owner of a lot of land at the corner of streets, for which he was lately offered the price of fifteen thousand dollars, which he refused; and that he considered the property *and that the said lot was free from all encumbrances* worth at least eighteen thousand dollars; that he is also the owner of three lots and houses on Bush street, for which he paid, ten or fifteen years ago, the sum of thirty thousand dollars, and that their present value is not less than forty thousand dollars, and that he received an income therefrom of three hundred dollars per month; that said property is mortgaged to the extent of twelve thousand dollars, and insured in the sum of twenty four thousand dollars.

On said examination Mr Shrier, by the advice of his counsel, declined to answer any question relating to the

resources and liabilities of said firm of J. Baum & Company, of which Mr Shrier is one of three partners.

Thereupon, on the 18th of October, counsel for complainants and respondents appeared before this honorable Court, and upon the objection of Mr Lowenthal as to the sufficiency of the sureties, this honorable Court rejected Mr Shrier and Mr Al. Hayman as sureties on the bond. Mr Joseph D. Redding, my counsel, on my behalf, offered to the Court to deposit with the Clerk of the Court the securities of Mr Hayman, mentioned in his examination. He also offered a certified check in the sum of ten thousand dollars, to be placed in the hands of the Court, and also offered for immediate examination and justification in open Court, as a new surety, Mr P. A. Finigan, a gentleman who, I am informed, is worth in unincumbered real estate in this city, county and state, nearly a million of dollars. None of these propositions were accepted by the Court, and thereupon the court made the order to dissolve the temporary injunction heretofore granted to these complainants, upon respondents filing a bond in the sum of ten thousand dollars by Monday, October 19th, 1885, at two o'clock, p. m. In all these proceedings I have promptly and faithfully obeyed the orders and mandates of the Court in spite of all the difficulties and obstacles which I had to contend against as a stranger in this city, three thousand miles away from my home, deprived of the assistance of friends and financial institutions necessary and requisite in such proceedings. I had every reason to be-

lieve that in offering such sureties as Henry Shrier and Al. Hayman, who was willing to deposit his securities with the Court, that said sureties would be acceptable and accepted by the Court.

As owner and proprietor of a large number of operas, plays and dramatic works in general, I have had, very often, occasion to apply to the different State and Federal courts of this country for an injunction for the protection of my proprietary rights; at no time have I been required to furnish a bond in such a large sum as ten thousand dollars, as in this instance; in many cases I have obtained a restraining order and temporary injunction, merely upon the prima facie case made out by the bill, affidavits and exhibits, without having been required to give any bond at all; in no case has a bond been in excess of the sum of three thousand dollars, while in a large number of instances the bond required of me was in the sum of one thousand dollars; therefore when I arrived here from New York I was not prepared, nor did I expect to be called upon, to furnish so large a bond.

I am now ready and prepared, should this honorable Court consider me entitled to a new injunction, to promptly comply with all the conditions in regard to bond that the Court may make, and I am ready and anxious either to offer good and responsible sureties, or to deposit the money in gold coin, or a certified check.

The mere fact of my absenting myself from the duties of my legal profession in New York, from my home, and from

my wife and children, for the purpose of enjoining the respondents from producing the said opera of 'Nanon', with a probable chance of recovering from respondents a small and insignificant sum as damages for counsel fees, not being entitled to any other damage in case they should not produce said opera; and the further fact that I have been kept here for nearly five weeks, under heavy expense, and have engaged counsel to defend my rights, and thereby incurred large liabilities for fees, costs and disbursements, and the fact that I have been ready and willing, and am now prepared and anxious to furnish such security as the Court may direct, either by way of bonds or deposits, --all these facts, I am convinced, will, in the judgment of this honorable Court, dispel any accusation of bad faith that might be brought or insinuated against me.

Each one of the bondsmen that I have offered in these various proceedings stated to me that they were householders and residents of this district, and were worth more than ten thousand dollars, unincumbered, above all just debts and liabilities, and I was sustained in that belief by information from other prominent citizens of this city in reference to the responsibility of said sureties, and upon said statements and information, and acting in all good faith, I have proceeded.

Subscribed and sworn to
before me this 17th day
of October A.D. 1885

J. D. Moncton
Commissioner of U.S. Circuit Court
District of California

Leo Goldmark

3838
Circuit 1

See Endward. etc

17

Frank Kuling, etc

Maria F. Kuling

of Leas, etc

Claber, etc

the ...

the ...

Filed
19 1885

...
...
...

Frank K. Kuling,
Relicta Constance

In the Circuit Court of the United States, Ninth Judicial Circuit, District of California.

Leo Goldmark and

Heinrich Conreid

Complainants

vs.

Joseph Kreling, William

Kreling, and John Kreling,

Respondents.

It appearing to my satisfaction by the verified bill of the complainants, and the affidavit of Leo Goldmark, one of them, and exhibits hereto annexed, that reasonable grounds exist for the granting of a preliminary injunction herein, and the complainants having given an undertaking as required by law:

I do hereby order that the said respondents, their assigns, agents, servants, and attorneys, and each and every person under the authority and direction of the said respondents be enjoined and restrained, and they are hereby enjoined and restrained until the hearing and decision of this motion, from enacting, producing or performing the operetta of "Nanon" or any operetta under the said title, or the dialogue, songs, or orchestral parts or scenes incidents, situations, or cast of characters of said operetta, or any adaptation or simulation thereof, or any part or portion of said operetta.

It is further ordered that said respondents or their attorneys show cause before me at this Court on the day of *Monday 28th*

Sept. 1885 at 11 o'clock, ^{am} or as soon thereafter as counsel can be heard, why the said respondents, their assigns, agents, servants and attorneys, and each and every person acting under the authority of the said respondents, should not be enjoined and restrained during the pendency of this action, and until the final termination thereof from enacting, producing or performing the operetta of "Napou" or any operetta under the said title, or the dialogue, songs or orchestral parts, or scenes, incidents or cast of characters of said operetta, or any adaptation or simulation thereof or part or portion of said operetta, and why such other and further relief in the premises should not be granted to the complainants as to the Court may seem just and proper.

Sufficient reason appearing therefor, it is further ordered that the service of this order be made forthwith. *And it is further ordered that this preliminary injunction be upon filing abroad in the Court after the second day, to be approved by the Clerk after the Court and not otherwise. Dated September 18, 1885.*

John A. Douglass
Circuit Judge.

In the Circuit Court of the
United States, Ninth Circuit,
District of California.

In Equity.

Leo Goldmark and Heinrich Conried Complainants v. Joseph Kreling et als. Respondents	}	No 3838.
--	---	----------

A restraining order having been granted in this action, restraining respondents from producing the opera "Ivanoe", with an order to show cause before this Court, on Monday the 28th of September, 1885, at 11 O'clock, A.M. why the said respondents, their assigns, agents, ^{servants} and attorneys, should not be enjoined and restrained during the pendency of this action, from enacting, producing or performing the Opera "Ivanoe" or any opera under the said title, etc., and the parties to this action, by their counsel, appearing in open Court, and it appearing to the satisfaction of this Court, by the Complaint,

affidavits and exhibits of
the complainants, ~~and~~ that
an injunction should issue,
and a bond of or \$10,000 with
good and sufficient sureties approved
by the Clerk of this Court, having
been duly signed and filed, by
the Complainants;

It is hereby ordered,
that the restraining order above
^{issued}
cease;

That the respondents, and
their agents, assigns, servants ^{and}
attorneys, and each and every
person acting under the
authority of said respondents,
are hereby enjoined from
producing, or performing or enacting
the operetta "Tanor" or any
operetta under the said
title, or dialogue, songs, orchestral
parts, or scenes, incidents,
or cast of characters of said
operetta, or any adaptation
or simulation thereof, or part
or portions of said operetta, until
the ^{further} order of this Court.

Dated 2nd day of
October, 1885

Chas. Hoffman
Dist. Judge

In the Circuit Court of the
United States, Ninth Circuit
District of California

Leah Goldmark, et al. }
vs. }
Joseph Kreling, et als. }

United States of America }
District of California }
City and County of San Francisco }

Joseph D. Redding, being duly
sworn, deposes and says, on information
and belief: That a certain book,
writing, or document, to wit: The
prompt book used for the first
production of "Tanon" at the Tivoli
Opera House is in the possession
or power of the defendants, and
particularly Joseph Kreling, and that
the same, if produced, would be
competent and material evidence
for the complainants in the above-
entitled action;

Wherefore affiant prays for
a subpoena commanding said

1 Joseph Kreling to appear and
2 testify before United States
3 Commissioners, S. C. Houghton,
4 at a time & place to be stated
5 in said subpoena and to bring
6 with him and produce to said
7 Commissioners, said book, writing
8 or document, to wit: the said
9 prompt book used for the first
10 production of "Ivanou" at the
11 Tivoli Opera House in the City
12 & County of San Francisco.
13 Joseph D. Redweg

14 Subscribed & Sworn to
15 before me this 27th day
16 of April, A.D. 1886. }

17 Geo. S. Craig
18 Notary Public
19
20
21
22
23

No.

IN THE

CIRCUIT COURT

OF THE

UNITED STATES

FOR THE

Northern District of California.

LEO GOLDMARK et al.

Complainants.

VS

JOSEPH KRELING et al.

Defendants.

DEFENDANTS' POINTS AND AUTHORITIES

submitted by

W. W. COPE,
of Counsel for Defendants.

Filed 1887.

..... *Clerk.*

By *Deputy Clerk.*

IN THE
CIRCUIT COURT
OF THE
UNITED STATES
FOR THE
Northern District of California.

LEO GOLDMARK et al.

Complainants.

VS

JOSEPH KRELING et al.

Defendants.

Points and Authorities submitted by W. W. Cope,
of Counsel for Defendants.

I.

There is no legal evidence of the authorship of
Genee and Zell. A direct issue on the subject is pre-
sented by the pleadings, and the evidence consists en-
tirely of hearsay testimony.

II.

But conceding for the purpose of the argument that
the authorship is sufficiently established, the evidence
shows that in the preparation and production of the
Operetta Nanon, as given at the Tivoli Opera House,
the defendants did not avail themselves of the labors
of Genee and Zell, except as contained in the German
publication now before the Court. The publication was
authorized by them, and it appears from the evidence

that two translations by different persons have been copyrighted here.

Taking this publication as far as it went, the defendants added an orchestration of their own, and a dialogue prepared from an old French comedy entitled *Nanon, Ninon, Maintenon*, except a small portion which was original. This portion refers to an interview between *Nanon* and *King Louis*, the fact of the interview being suggested in the German publication.

The scenery, stage business, and other accessories were prepared and arranged by the defendants from their own knowledge of such matters, and the suggestions contained in the French comedy and German publication alluded to.

By comparing this comedy with the operetta attributed to *Genée* and *Zell*, the Court will see that the latter is a mere adaptation of the former. It is the same thing in a new dress, more attractive perhaps, but without any other claim to originality.

III.

The right of the defendants to use the published portion of the Operetta is too plain for argument. To that extent the Operetta was dedicated to the public, and has ceased to be private property.

Drone on Copyright, 101, 292, 577.

The assignment to the complainants, whether before or after the publication, makes no difference. All they acquired was an exclusive right of representation in the United States. Subject to this right, the ownership remained in the authors, who could deal with the Operetta in Germany as they pleased.

Palmer vs. DeWitt, 47 N. Y. 540, 541.

It is obvious that the interest of the complainants did not extend to Germany, and that the consent of the authors was sufficient authority for the publication there. The effect of the publication is a matter of law, and I

submit that a monopoly in a foreign composition cannot exist here, after the composition has been abandoned to the public elsewhere. *Drone*, in speaking of the rights of assignees standing in the same position as the complainants, says: "Of course, when the original play is anywhere published in print by authority of the author, it becomes common property in this country at least, and may be translated or adapted by any person".

Drone on Copyright, 582, 583.

It seems unnecessary to spend time in the argument of such a question. If the contract with the complainants was violated by the publication, their remedy is against the authors for a breach of the contract. They cannot prevent the use of the publication by others.

IV.

Having the right to use this German publication, the defendants could add to or build upon it to any extent by their independent labor; and for the purpose of making these additions, they could use the same common materials on which the original version of the Operetta was founded.

Drone on Copyright, 459. See also 205—208, and cases cited in the notes.

Carte vs. Ford, 15 Fed. Rep. 439.

Carte vs. Duff, 25 Fed. Rep. 183.

Banks vs. McDivitt, 13, *Blatch*. 163.

V.

The name — *Nanon* — was appropriated from the French comedy used in preparing the Operetta, and appears in the German publication. As the name was not original with the assignors of the complainants, and had been previously applied to a similar dramatic production, there is no ground on which an exclusive right to its use can be asserted.

*The Genuinum is Smellies Name
or the holder of the Gold Medal
H. J. Dyer Nonon alon.*

The principle involved was expressly decided in *Benn vs. LeClercq*, 18 Int. Rev. Rec. 94. So in *Arinson vs. Fleckenstien*, 28 Fed. Rep. 75, where an injunction was granted, the court put its decision on the distinct ground that the name was new and original in its application. In *Canal Company vs. Clark*, 13 Wall. 311, the same doctrine was laid down in respect to a trade-mark. *Carte vs. Ford* and *Carte vs. Duff* are also in point. In the former, the Court refused to enjoin the use of the name; and in the latter, the defendant was permitted to use it, though the subject was not adverted to in the opinion.

VI.

The question of deceptive advertisements is purely one of fact, and I earnestly insist that the case has not been made out even on this point. My views on the subject were fully stated in the oral argument, and need not be repeated. If the Court should differ with me in opinion, and grant an injunction in respect to the advertisements, I refer to *Carte vs. Ford* as showing the extent to which the injunction should go.

VII.

I have so far treated the Operetta as having sufficient originality to entitle it to protection, but being a mere reproduction of a previous musical and dramatic composition precisely similar in its character, its claim to originality cannot be sustained. A few changes were made in form and expression, but the Operetta is substantially the same as the French comedy.

The evidence bearing upon the points made will be referred to with more particularity by Mr. Lowenthal.

All of which is respectfully submitted.

W. W. COPE,
of counsel for defendants.

No. 11,579

In the Circuit Court

OF THE UNITED STATES,

NINTH JUDICIAL CIRCUIT,

For the Northern District of California.

Leo Goldmants
et al

vs.

Wm. Kreling

JUDGMENT ROLL.

Filed April 18 1892

L. V. B. Sawyer
Clerk.

By W. B. Beasley
Deputy Clerk.

H. W. Lowenthal
Attorney for Deft.

Leo Goldmark
Heinrich Conried and
Carl Hermann
against
William Kreling

First:- That the plaintiffs are and at all the times herein-
after mentioned were copartners in business in the City of
New York State of New York under the firm name of Goldmark
and Conried.

Second:- That the plaintiffs and each of them at all times were and now are citizens of the State of New York and bona fide residents of the city and county of New York therein.

Third:- That the defendant now is and at all the times herein mentioned was a citizen of the State of California and a resident of the City and County of San Francisco therein.

Fourth:- That on or about the 27th. day of January 1891 at the city and county of San Francisco, State of California the defendant entered into an agreement in writing with the plaintiffs wherein and whereby the defendant, agreed to pay to the plaintiffs for the production and performance at the Tivoli Opera House at San Francisco State of California any opera, operetta, comedy, ballet or ~~xx~~ other stage work belonging to and controlled by the plaintiffs the sum of Three hundred

Dollars as royalties in advance for the first two weeks per
formance of such opera, operetta, comedy, ballet or ~~the~~ other
stage work, and the further sum of One hundred dollars as
royalties thereon for each and every week's performances there-
of subsequent to the said first two weeks .

Fifth:- That the plaintiffs are and were at all the times
herein mentioned the owners of and controlled among others
the following operettas to-wit:-

"Gypsy Baron", "Beggar Student", "Gasparone", "Die Fledermaus",
"Donna Juanita", "Vice Admiral" and "Nanon".

That, as the plaintiffs are informed and believe the defendants
did at divers times during the years 1891 and 1892 produce
and perform at the Tivoli Opera House in the City and county
of San Francisco, State of California the following operettas
owned and controlled by the plaintiffs, to-wit:- "Gypsy Baron"
for three weeks during the month of April 1891, "Beggar
Student" for two weeks during the month of May 1891, "Gasparone
for two weeks in May and June 1891, "Die Fledermaus" for one
week and a half during the months of October and November
1891, "Donna Juanita" for one week during the month of
December 1891, "Vice Admiral" for two weeks during the month
of March 1892, "Nanon" for two weeks beginning March 14 1892.

Seventh:- That the royalties upon the production and per-
formances of the said last mentioned operettas for the period
above mentioned ~~was~~ and agreed to be paid therefor by the
defendant amounts to One thousand nine hundred and fifty
Dollars.

Eighth:- That the interests upon the said sums from the time
they respectively ^{became} ~~became~~ became due to the date of filing this

complaint amounts to \$35.30.

Wherefore the plaintiffs demand judgment against the defendant for the sum of One thousand three hundred and eighty-five 30-100 Dollars with interest on \$1350.00 thereof from the date of filing this complaint at the rate of seven per cent per annum together with the costs and disbursements of this action.

W. J. Tuska

Plaintiffs' Attorney.

United States of America :

State of California : SS:-

City and County of San Francisco:

Wal. J. Tuska being duly sworn, deposes and says:

That he is the attorney for the plaintiffs in the above-entitled action. That he has read the foregoing complaint, and knows the contents thereof. That the facts therein stated are true of his own knowledge, except as to the matters which are therein stated on information and belief and as to those matters he believes it to be true.

That the reason why this complaint is verified by affiant is that the plaintiffs are all absent from the city and county of San Francisco aforesaid, which is the County where affiant resides.

Subscribed and sworn to before

me this 22nd day of March 1892.

W. J. Tuska

Circuit Court of the United States,

Northern

NINTH CIRCUIT, DISTRICT OF CALIFORNIA.

Leo Goldmann Heinrich
 Courier, per Carl Hermann

PLAINTIFF S

vs.

William Kreling

DEFENDANT

Action brought in the said Circuit Court, and the
 Complaint filed in the office of the Clerk of said Cir-
 cuit Court, in the City and County of San Francisco.

The President of the United States of America, Greeting:

To

William Kreling

Defendant

You are hereby required to appear in an action brought against you by the above-named plaintiff, in the
 Circuit Court of the United States, Ninth Circuit, in and for the District of California, and to file your plea,
 answer or demurrer, to the complaint filed therein (a certified copy of which accompanies this summons), in the
 office of the Clerk of said Court, in the City and County of San Francisco, within ten days after the service on you
 of this summons—if served in this County; or if served out of this County, then within thirty days,—or judgment
 by default will be taken against you.

The said action is brought to recover against you a judgment for the
 sum of One thousand three hundred and eighty five ³⁰/₁₀₀
 dollars, and interest alleged to be due by you on a written
 Contract executed by you in favor of the plaintiff for
 the payment of royalties for the production of certain operettas
 at the agreed price in the aggregate of Nineteen hundred
 and fifty dollars on account of which you have paid Six
 hundred dollars only. Said contract was executed January
 27, 1891, at San Francisco, California, all of which will more fully appear
 from the Complaint on file herein, and to which you are particularly referred.
 and if you fail to appear and plead, answer or demur, as herein required, your default will be entered and the
 plaintiff will take judgment against you for the sum of \$1385. ³⁰/₁₀₀
 with interest on \$1350. thereof from March 22, 1892 at the rate of
 7 per cent per annum. The costs and disbursements of this action

Witness, the Honorable MORRISON R. WAITE, Chief
 Justice of the Supreme Court of the United States, this

22nd day of March
 in the year of our Lord one thousand eight hundred
 and ninety two and of our
 Independence the 66th

By *D. D. Sawyer* Clerk

By

United States Marshal's Office,
Northern District of California.

I hereby Certify, that I received the *Within* Writ on the *22*
March 1892, and personally served the same on the *22* day of
March 1892, on *William Kriling*

William Kriling

by delivering to and leaving with

Said defendant named therein personally, at the *City & County of San Francisco*
in said District a certified copy thereof, *Together with a certified copy*
of the Complaint certified to by W. J. Tuska
Esq. Plaintiff's Attorney attached thereto

San Francisco,

W. D. Long
U. S. Marshal

March 23,

1892

J. C. Monckton
Deputy

No. *115-79*

U. S. Circuit Court,

Northern
Ninth Circuit, District of California.

Leo Goldman
vs. *et al*

William Kriling

SUMMONS.

W. J. Tuska Esq.
Plaintiff's Attorney.

Filed *March 23* 1892

L. S. B. Sawyer
Clerk.

W. J. B. Sawyer
Deputy Clerk.

In the Circuit Court of the United States,
Ninth Judicial Circuit, Northern District of
California.

Leo Goldmark, et al

vs

Wm. Kreling

No 11579

The Court having upon motion of W. J. Duvall Esq. Counsel for plaintiff, ordered that the above entitled cause be dismissed.

Now therefore by virtue of the law, and by reason of the premises aforesaid, it is considered by the Court that the plaintiffs take nothing by this action, and that the defendants go henceforth without day.

Judgment entered April 18, 1892.
L. S. B. Sawyer

Clk.

1 UNITED STATES CIRCUIT COURT :-

2 NINTH JUDICIAL CIRCUIT :-

3 NORTHERN DISTRICT OF CALIFORNIA :-

4
5 Leo Goldmark, -Heinrich Conreid 0

6 and Carl Hermann, 0

7 Plaintiffs. 0

8 -vs- 0

9 William Kreling, 0

10 Defendant. 0

11
12
13 To the plaintiffs above named and Wai J. Tuska, Esq., their
14 attorney:

15 Your will please take notice that an order was made
16 this day staying all proceedings on the part of plaintiffs
17 herein and that defendant's time to plead herein has been ex-
18 tended until and including Monday, the 18th. day of April 1892.
19

20
21 Attorney for defendant-

22 411 I-2 California St.
23
24
25
26
27
28

In the Circuit Court of the United States of America
For the Ninth Judicial Circuit
Northern District of California.

Leo Goldmark et al.

VS.

William Kreling

The plaintiffs hereby consent that the foregoing entitled action may be dismissed and the Clerk of this Court is hereby directed to enter a dismissal accordingly. *ll*

На Гуска

Attorney for plaintiffs'.

1 Said motion will be made and based upon the ground
2 that the plaintiffs in this action reside out of the STATE OF
3 CALIFORNIA and the NORTHERN DISTRICT thereof, and reside in the
4 CITY, -COUNTY and STATE of NEW YORK.

5 On the hearing of said motion, defendant shall use, read
6 and refer to the complaint of plaintiffs ~~xxxxxx~~ and all pap-
7 ers on file in this case, and ~~to~~ the affidavit herewith served
8 and filed.

9 Dated

10 A.D. 1892.

11 Yours &c.,

12 
13
14 ATTORNEY FOR DEFENDANT.
15
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IN THE CIRCUIT COURT OF THE UNITED STATES OF AMERICA:-
FOR THE NINTH JUDICIAL CIRCUIT:-
NORTHERN DISTRICT OF CALIFORNIA:-

LEO GOLDMARK, -HEINRICH CONRIED

and CARL HERRMANN, =

-vs-

WILLIAM KRELING.

UNITED STATES OF AMERICA-

STATE OF CALIFORNIA-

CITY AND COUNTY OF SAN FRANCISCO-

::

::

:: SS.

::

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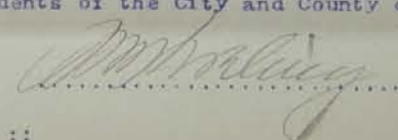
WILLIAM KRELING, being duly sworn doth depose and say:

that he is the DEFENDANT in the above entitled cause; that
LEO GOLDMARK, -HEINRICH CONREID and CARL HERRMANN, the ~~Com-~~
PLAINTIFFS above named, reside out of the STATE OF CALIFORNIA and
the NORTHERN DISTRICT thereof; and at the time of the commence-
ment of this action were and for a long time previous thereto
had been, and now are, residents of the City and County of NEW
YORK,

Subscribed and sworn to

before me this 25 day

of April, 1892



The President of the United States of Am.

TO

Thomas M. Waller

GREETING:

KNOW YE, That we, in confidence of your prudence and fidelity, have appointed you a Commissioner and by these presents do give you Thomas M. Waller full power and authority diligently to examine upon his corporal oath or affirmation, before you to be taken, and upon the interrogatories and cross interrogatories hereunto annexed

Alfred Hays, of London, England.

as a witness on the part of the Respondents in a certain cause now pending undetermined in the Circuit Court of the United States of the Ninth Judicial Circuit in and for the District of California, wherein

Northern
Thomas H. French is complainant
and Joseph Kuehling, John Kuehling, and William Kuehling
are respondents Number 4035

And we do further empower you to examine on the same
it and in like manner, any other person or persons who may be produced as witnesses before
you and we do hereby require you said Thomas M. Waller before whom
such testimony may be taken, to reduce the same to writing; and to close it up under your hand
and seal directed to LORENZO S. B. SAWYER, Clerk of the Circuit Court of the United States of the
Ninth Judicial Circuit, in and for the District of California, at the City of San Francisco, as soon
as may be convenient after the execution of this commission; and that you return the same, when
executed, as above directed, with the title of the cause endorsed on the envelope of the commission:

Witness, the HONORABLE A. J. Miller Senior Associate Justice
of the Supreme Court of the United States of America, this
sixth day of June
in the year of our Lord one thousand eight hundred and
eighty and of our independence the thirteenth
L. S. Sawyer CLERK.



By

D. C.

United States Circuit Court,
Ninth Judicial District ^{and}
District of California.
In Equity.

Leo Goldmark
et al
vs.
Joseph Keeling
et al.

United States of America }
State of California, City } S.S.
and County of San Francisco }

Johann S. Lindtner,
being first duly sworn doth
depose and say; I reside in the
City and County of San Francisco,
and have resided in said city
for twelve years last past. I
was born in Norway, and am a
musician by occupation, and play
almost all the musical instruments
known in the civilized world, and
am a musical composer, writer and
arranger, and have been such for
about thirty years last past.

I am in the employ of Kelling Bros., the defendants herein, and have been so engaged by them for the period of six years last past, I have arranged during said period the orchestration of about fifty operas produced at the Tivoli Opera House, from published piano forte scores, without the aid or assistance of the original orchestration of any of said operas. At the request of Joseph Kelling, one of the defendants, I prepared and arranged the orchestration of the Operetta known as "Hanon", as produced by the defendants at their Opera House in the City and County of San Francisco.

I prepared and arranged said orchestration solely and exclusively from the German Piano forte score published in book form in Germany, and furnished to me by defendants, which German score is spoken of in the affidavit of Joseph Kelling hereto annexed. I was engaged in the arranging of said orchestration for said operetta nearly six weeks, and I did not use or employ at

any time during the course of my preparing said orchestration as aforesaid, the original or a copy of the music or orchestration claimed to have been composed by R. Genée and F. Zell, or by any other person, nor have I used any part or portion thereof, or ever seen or read any original of the composer's orchestration, or a copy thereof.

My orchestration of said Operetta "Nanon" as produced at the Trivoli Opera House" is an entirely original adaptation and arrangement of my own, accomplished by severe study and labor, solely from my own knowledge of operas and music, and from the published pianoforte score of said Operetta referred to as aforesaid. I have arranged in the manner aforesaid, said orchestration for fifteen different instruments, composing the orchestra at said Trivoli Opera House, solely and exclusively from said pianoforte score referred to, without the aid of any manuscript of the original orchestration, or any orchestration com-

forced by Richard Gence and F. Zell,
or by any other person or persons.

Subscribed to ^{and} sworn
to before me this 19th day } Johann J. Lindtner
of Oct. 1885.

Chas. D. H. H. H.
Notary Public

United States
Circuit Court.

9th District.
3838

Leo Goldmark
et al

vs.
Joseph Keeling
et al

Applicant of
J. S. Lindtner

Filed Oct. 19, 1885
L. A. Sawyer
Clerk

H. Comenthal
Recorder for dfts.

"Narrow"

Cast.

- L. ✓ Narrow - ✓
 L. ✓ Union - ✓
 S. ✓ Maintenance - ✓ small book
 ✓ Gaster - ✓
 L. ✓ D'Aubigne - ✓
 S. ✓ Marquis de Marillac ✓
 L. ✓ Hector " ✓ "
 S. ✓ Bombardini - Introduction
 S. ✓ Flambergel - ✓
 S. ✓ Ablee - La Platte - - ✓
Revants &c ✓

Act First.

The inn of the Golden Lamb.

"No! Chorus & Ensemble"

Soldier.

Heres to the future host of the Golden Lamb! (all drink)
(Enter Marillac and Hector L. U. E.)

Nanon. Ah! The Marquis de Marillac!

Marillac. And Hector, Vicount de Marillac, my nephew! - Beautiful Nanon, we greet you! (to Hector) Nanon Paten, hostess of "The Golden Lamb."

Hector. Delighted, Mademoiselle!

Marillac. And now Hector, I will leave you alone with the bewitching Nanon for a moment, while I see our horses attended to!

Hector. All right Uncle! (Exit Marillac L. U. E.)

Nanon. To what am I to attribute the honor of your visit, Vicount?

Hector. My uncle informed me that you were a divine creature and beautiful beyond comparison, and I could not withstand the temptation of paying my respects to you!

Nanon. You flatter me, Vicount!

Soldat
Kreling
Compliment's Exhibit
No. 3833
A
Examiner.

Personen:

Ninon De L'Enclos

Frau von Frontenac, } Ninon's
Gräfin Houlières, } Freundinnen.

Marquis von Marsillac, Tutor des Königs, Königl. Kammerherr

Hector, Vicomte v. Marsillac, sein Stiefsohn

Mathieu,

Bertrand,

Jerome,

Pierre,

Jean,

Therese,

Lisette,

Marion,

ihre Bedienten

Der zweite bei Ninon de L'Enclos, der dritte bei Frau von Maintenon.

Frau von Tulbert, } Hofdame
Fräulein von Armenonville, }
Abbé la Plâtre

Gaston, Ninon's Page
Bombardini, Tambour-major.

Guillaume, } Tambours
Francois, }

Isidore, } Pfeifer
Jerome, }

Perotte, Ninon's Diener.

Baptiste, Diener bei Frau von Maintenon

Jaqueline, Köchin bei Marion.

Ein Commissär

Leutnants, Offiziere, Herren u. Damen vom Hofe, Soldaten, u. f. w.

Die Handlung spielt in Paris um's Jahr 1685, der erste Akt in Ninon's Stiefsohn,

der zweite bei Ninon de L'Enclos, der dritte bei Frau von Maintenon.

Erster Akt.

Im Stiefsohn zum goldnen Laune. Eine Art Hofpavillon, von weissem Marmor und hohen Säulen in der Mitte das Hauptstück. Nach rückwärts hin ist die Türe bis auf 2 hohen Pfeiler, welche das Dach tragen, offen. Der Hofpavillon bildet freundliche Gärten, zwischen Hofpavillon und Laune ein Gitter, sowie einige Lockerts. Am Gitter das Stiefsohnspil, ein goldner Laune davor. Zum Hofe nach rückwärts (: vorwärts Zimmer :) führen 3 Türen, deren oberste eine kleine Klappform mit gelbem Bild.

1. Scene.

1. Introduction.

Bürger, Frauen, Studenten, Soldaten in weissem Fräulein. Einige von ihnen trinken, Andere ab - u. zugehend. Zuletzt Marion.

Allgemeiner Chor.

Bei Marion ist nicht nur der liebste Mann,
Auch der liebste Stiefsohn, der bringt ihn
samm.

Und pflegt ihn mit mir.

Darum ist auch weislich in Welt u. Laune
Das Glückselig von Marion beliebt u. beliebt.

Da lebt sie's charmant,

Und wenn sie ein Liedchen hören dann läßt,

1. Das ist ein Lied! :)

Die vornehmsten Herren,

Die so viel so gern,

Ja, Marion, Marion liebt sie Mann.

Da kommt sie,

Da ist sie!

1. Alle die Lieder haben u. empfanden!

Marion so! Marion so!

3838

Al.
Gold
Kred
Con

Den Bühnen gegenüber als Manuscript gedruckt.

Uebersetzungsrecht vorbehalten.



Red &

Filed March 23 188

L. S. B. SAWYER, Clerk.

By *D. D. Mackton*
DEPT. CLERK.

Die

Fledermaus.

Operette in 3 Acten

von

Johann Strauß.

*Das Lese- und Aufführungsrecht ist mir zu erwerben
durch die H. K. K. Hof- und Consort-Direction*

von

Gustav Levy,

k. k. Hof-Musikalienhändler in Wien, IV Dilschmüßlgasse 8.

U. S. Circuit Court, Dist. of Cal.

Goldmark

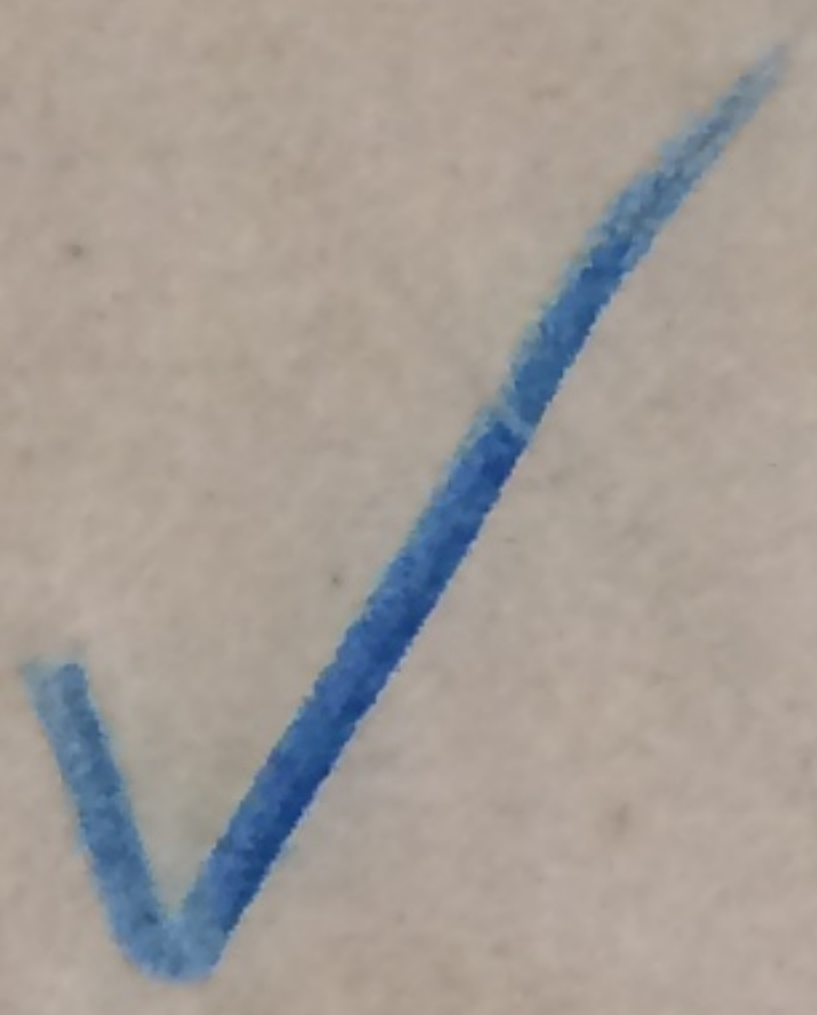
v.
Kreling

No. 3838.

Respondent's Exhibit 5, (pages 1 to 2)

Examiner.

ON.



THREE ACTS.

Rec'd

Filed

March 23

1887

L. S. B. SAWYER, Clerk.

RICHARD GENE.

By

DEPUTY CLERK,

TRANSLATED AND ADAPTED BY

LOUIS C. ELSON.

WHITE, SMITH & COMPANY.

BOSTON:

316 WASHINGTON STREET.

CHICAGO:

5 AND 6 WASHINGTON STREET.

[Copyright, 1885, by White, Smith & Co.]

U. S. Circuit Court, Dist. of Cal.
Goldman
v.
Kindberg
Respondent's Exhibit
Examiner.

Recd+ Filed March 23 1887
L. S. B. SAWYER, Clerk.

By P. D. Monckton
DEPUTY CLERK

NANON.

(Die Wirthin vom goldnen Lamm)

KOMISCHE OPER

in drei Acten

von F. Zell und Richard Genée.

MUSIK VON

RICHARD GENÉE.

Vollständiger Clavierauszug mit Text

Pr. M. 12. —
fl. 6. 30.

Clavierauszug ohne Text

Pr. M. 4. 50.
fl. 2. 70.

London, Ent. Sta. Hall.

Eigenthum des Verlegers. Mit Vorbehalt aller Arrangements.

Hamburg, Aug. Cranz. Brüssel, A. Cranz.

Wien, C. A. Spina.
(Alwin Cranz)

U. S. Circuit Court, Dist. of Cal.

Goldmark

No. 3838.

vs. *Krieling*

Respondent's Exhibit 4.

Ref. Examiner.

Leeds
The Great European and American Success.

Filed *March 23* 1887

L. S. B. SAWYER, Clerk.

By

J. D. Monciston

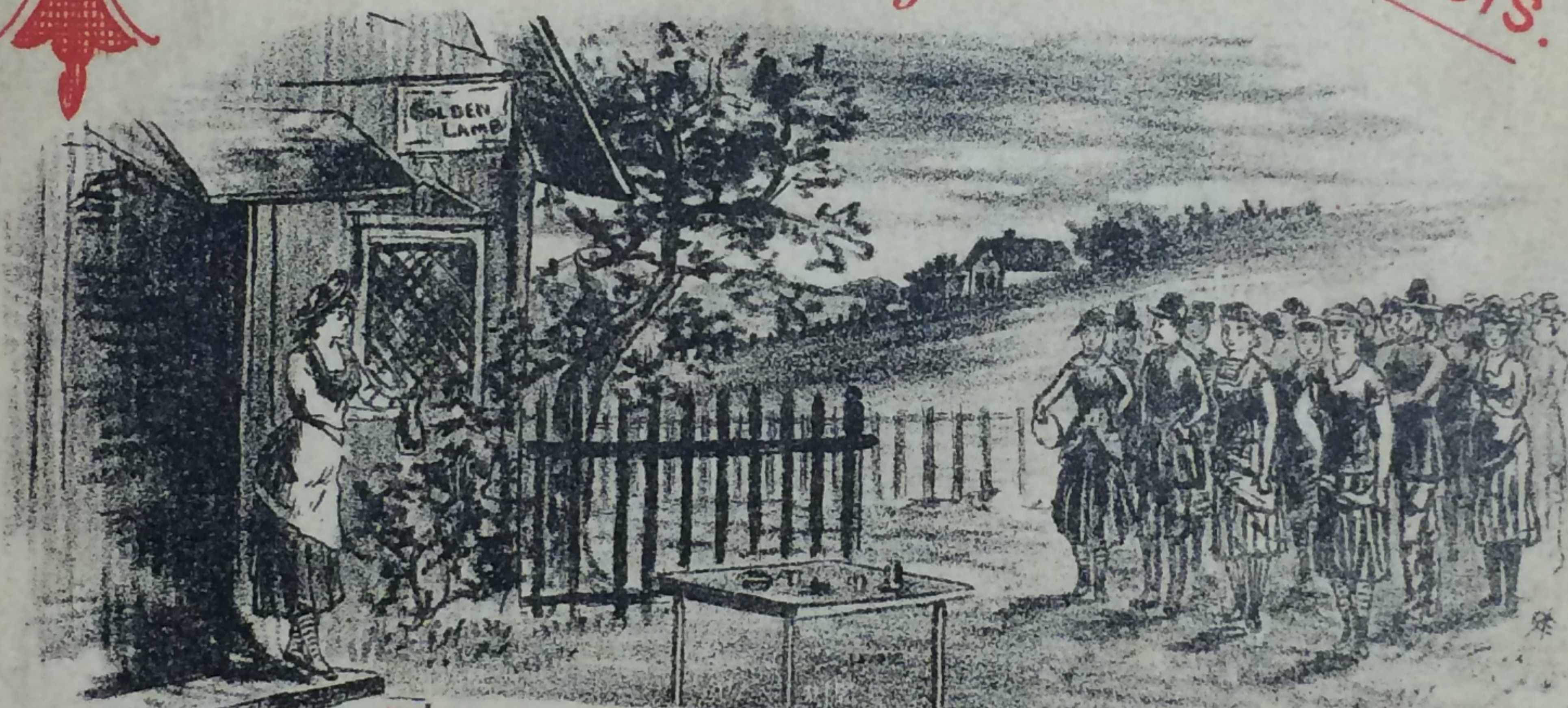
DEPUTY CLERK.

Patton

Die Wirthin vom goldenen Lamm.

Comic Opera. in 3 Acts.

German and English Text.



Translated and Adapted by

Louis C. Elson.

Music by

RICHARD GENÉE.

Vocal Score 1.00

Gems .25

Piano Score .50

